KachlIn Vs. Mulhallon

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Court : US Supreme Court

Decided On : 1795

Appeal No. : 2 U.S. 237

Appellant : Kachlin

Respondent : Mulhallon

Judgement :

KACHLIN v. MULHALLON - 2 U.S. 237 (1795)
U.S. Supreme Court KACHLIN v. MULHALLON, 2 U.S. 237 (1795)

2 U.S. 237 (Dall.)

Kachlin et al.
v.
Mulhallon, et al. *

Supreme Court of Pennsylvania

September Term, 1795

Debt on a bond. Plea, payment, with leave &c.; and issue. The counsel for the defendants had given notice, agreeably

to the 39th rule of practice, that evidence to the following effect would be offered on the trial of the cause, to wit; That the bond was given for payment of the consideration money of a tract of land and mill, which the plaintiffs had sold to the defendants, reserving in the deed a right to swell and raise the water, so as not to injure the mill; but that the plaintiffs had raised the water, so as to injure the mill.

The counsel for the plaintiffs (Ross and Thomas) objected to the evidence, on the ground, that the injury, if it had really happened, was in the nature of a tort, for which the damages were not ascertained, and could not be set off in an action upon the bond. 1 Bl. Rep. 394. Cowp. 5. 6. 4 T. Rep. 74. 511. Doug. 665. 4 Bac. Abr. 116.

The defendants' counsel (Ingersoll and Sitgreaves) stated, that the evidence was not meant to operate, strictly, as a set-off, but as an equitable defence. The consideration of the bond had, in a great degree, failed by the act of the plaintiffs; and, as the consideration might be enquired into, any thing is admissible in evidence on the plea of payment, which tends to shew, that the plaintiffs, ex equo et bono, ought not to recover. 1 Dall. Rep. 17. 260. Besides, the reservation in the deed is in nature of a covenant, and wherever the intent of the parties appears under hand and seal, an action of covenant lies. 1 Cha. Cas. 294. 6. Vin. Abr. 381. pl. 21. 22. 2 Mod. 91. 1 Leon. 277. pl. 1. Ib. 375. 6 Vin. Abr. 379. pl. 12. 2 Com. Dig. 559. 560. 1 Saund. 322. 1 Salk. 196. Cro. Car. 437. 1 Sid. 423. T. Raym. 183.

By the Court: The question is, whether, under the liberality of the practice of our Courts of Justice, such evidence is admissible? To decide in the affirmative, the case must either be embraced by the general provision of the act for defalcation (1 Vol. Dall. Edit. p. 65.) or by the 39th Rule of the Supreme Court. Now, although our act of Assembly extends further than the British statutes of set-off (2 Geo. 2. c. 22. and 8 Geo. 2. c. 24) we do not think it comprehends a defalcation of the nature contended for: And, though the 39th Rule of the Court ascertains what evidence is admissible on the plea of payment, it contains nothing descriptive of the present

circumstances, where there was a good consideration for the bond, though the defendants have been injured by the subsequent conduct of the plaintiffs.

If, however, the defendants would otherwise be without a remedy, we should be solicitous, by any rational construction of

Page 2 U.S. 237, 239

the law, to admit the evidence: But, it is clear, that they may have an adequate redress for the wrong which they have suffered, in a form of action suited to their case.*

The evidence was rejected; and a verdict given for the amount of the plaintiff's demand. Footnotes

[Footnote *] Decided at Easton, Nisi Prius, on the 2nd. of October 1795, before Yeates and Smith, Justices.

[Footnote *] Yeates, Justice, added, that in the case of Sweetzer v. Garber tried at Nisi Prius, in Cumberland County, when he was Counsel for one of the parties, a similar principle was decided. The Vendor had interrupted the Vendee in the enjoyment of the tract of land, which had been sold; but the latter was not allowed to give the matter in evidence, in an action brought by the former, to recover the purchase money.